

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5710 OF 2006

Mudra Mills ...Petitioner
VS.
P.R.Fabrics and another ...Respondents

Mr.T.S.Ingale for the Petitioner
Mr.S.K.Jain for Respondent Nos.1 and 2.

CORAM: A.S.OKA, J.
DATE : MARCH 7, 2007.

P.C.:

1. Heard the Advocate for the Petitioner and the Advocate for the Respondent Nos. 1 and 2. The Petitioner is the original Plaintiff in a suit for recovery of money. The Respondents are the Defendants. The challenge in this Petition is to the orders passed by the trial court on applications at Exh.33,34,35, 42 and 60.

2. The Application at Exh.33 is made by the Petitioner by invoking provisions of Rule 12 of Order XI of the Code of Civil Procedure,1908. The prayer in this application is for directing the Respondents to produce the original agreement and the receipt dated 25th March 2001. The learned Trial Judge disposed of the said Application by directing the Respondents to produce the receipt dated 25th March 2001. The learned trial Judge however came to the conclusion that the original agreement which is subject matter of the prayer made in the said application is in the custody of the Petitioner and therefore, he directed the Petitioner to produce the said document. The Application at exh.34 was made by the Petitioner for recasting the issues where prayer is for

deleting the issues 1 and 2 on the ground that in view of the admissions in the written statement, the said issues do not arise. Exh.35 is an application for issuing witness summons to a Notary Public for production of certain documents as mentioned in the said Application. Exh.42 was a Notice calling upon the Petitioner to produce the agreement for sale dated 25th March 2001. Lastly, the application at exh.60 is for recording an objection to the agreement to sale and receipt dated 25th March 2001 on the ground of want of registration and insufficiency of the stamp duty. The learned Trial Judge rejected the Application at Exh.34 for recasting the issues. The learned Trial Judge also rejected the Application at exh.35. The notice to produce the documents was disposed of by the learned trial Judge while passing an order on Application at Exh.33. The Application at Exh.60 has been disposed by holding that at this stage, the said application needs no consideration and a liberty was granted to the Petitioner to make a fresh application.

3. I have heard the submissions of the learned Counsel for the parties. In so far as order passed below Application at Exh.33 is concerned, it was an application filed by the Petitioner and on such application the learned trial Judge could not have directed the Petitioner to produce the original agreement dated 25th March 2001. There is a dispute between the parties as regards the custody of the original agreement. Only after evidence is led in the suit, a finding could have been recorded as to whether the Petitioner or the Respondent

is in possession of the said agreement. Therefore, the order passed on the Application at Exh.33 and Exh.42 is required to be modified.

4. The order rejecting the Application at Exh.34 is a purely an interlocutory order. Even during the course of hearing of the suit, the learned Judge can modify/recast and/or delete the issues and it is not necessary to interfere with the said order. In so far as application at Exh.35 is concerned, contention of the Petitioner is that the documents i.e. Agreement and receipt dated 25th March 2001 are not executed by him and the execution of the said documents is specifically denied by the Petitioner. It is alleged that the said documents are notarised before a Notary Public and therefore, the prayer is made for issuing witness summons to the said Notary for production of the register maintained by him. The Petitioner was justified in applying for witness summons to the Notary Public. The said application ought to have allowed by the learned trial Judge.

5. In so far as Application at Exh.60 is concerned, both the receipt and the agreement are not yet produced before the Trial court. When the question of exhibiting the said documents after production thereof arises, the Trial Court is bound to take into consideration the objection raised by the Petitioner in the Application at Exh.60 to the admissibility of the said documents.

6. Hence, Writ Petition is disposed of by passing the following order :

- i) Order dated 12th January 2006 passed below Exh.33 and 42 is modified. The direction issued by the learned Judge to the Petitioner to produce the agreement dated 25th March 2001 is quashed and set aside. Appropriate directions, if any, will be issued by the trial court in that behalf after the parties lead evidence at the time of trial of the suit. All the contentions of the parties as regards custody of the agreement are kept open.
- ii) The order passed by the trial court below Application at Exh.34 is confirmed. However, all contentions of the parties as regards issue Nos.1 and 2 are expressly kept open.
- iii) Order passed below Exh.35 is quashed and set aside. The trial court will issue witness summons to the concerned Notary Public for production of the register maintained by him containing entries of the alleged documents. It is obvious that the witness summons will be issued and served at the cost of the Petitioner. Accordingly, application at Exh.35 stands allowed.
- iv) In so far as Exh.60 is concerned, the order of the trial court is confirmed. However, all contentions which are raised by the Petitioner in Application at Exh.60 are

expressly kept open.

- v) Writ Petition is disposed of in above terms.

JUDGE